

Introduced by Senator Yee

February 24, 2012

An act to repeal and add Section 89574 of the Education Code, and to amend Sections 8547.7 and 53087.6 of the Government Code, relating to investigations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1336, as introduced, Yee. Improper governmental activities: investigations: confidentiality.

(1) The California Whistleblower Protection Act establishes procedures under which a state employee may report improper governmental activities or make a protected disclosure to the State Auditor and prohibits retaliation or reprisal against a state employee for these acts. The act requires the State Auditor to investigate and report on improper governmental activities, as defined. The act requires the State Auditor to keep confidential every investigation, except that the State Auditor may release any findings or evidence supporting any findings resulting from an investigation and issue a public report of an investigation that has substantiated an improper governmental activity. The act requires the report to keep confidential the identity of the employee or employees involved.

This bill would instead require the State Auditor to release any findings resulting from an investigation conducted pursuant to this act that has been substantiated, to release information regarding any action taken by any agency or authority to which the results of the investigation have been reported, and to issue a report of any investigation that has not been substantiated, as specified.

(2) Existing law authorizes a city, county, or city and county auditor or controller to maintain a whistleblower hotline to receive calls from

persons who have information regarding fraud, waste, or abuse by local government employees. Existing law requires any investigation conducted pursuant to this authorization to be kept confidential, except to issue any report of an investigation that has been substantiated or release any findings resulting from a completed investigation, as specified.

This bill would instead require any investigative audit to be kept confidential, except to release any findings resulting from an investigative audit conducted pursuant to this authorization that has been substantiated, to release information regarding any action taken by any agency to which the results of the audit have been reported, and to issue a report of any investigative audit that has not been substantiated, as specified.

(3) The California State University Investigation of Reported Improper Governmental Activities Act establishes a procedure for the investigation of written complaints submitted to a designated administrator of the California State University by employees of, or applicants for employment at, the university. The act requires every investigative audit conducted pursuant to it to be kept confidential, except that the California State University may release any findings resulting from the investigation, as specified, and issue a report of an investigation that has substantiated an allegation made by the complainant. The act requires the report to keep confidential the identity of the individual or individuals involved.

This bill would instead require the California State University to release any findings resulting from an investigative audit conducted pursuant to this act that has been substantiated, to release any action taken by the university or any other agency to which the results of the investigative audit have been reported, and to issue a report of any investigative audit that has not been substantiated, as specified.

(4) The California Constitution requires that a statute, court rule, or other authority adopted after November 4, 2004, that limits the public's right of access be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

The bill would, with respect to this constitutional provision, express findings and declarations of the Legislature regarding the individual privacy interests that are protected under the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) This bill imposes a limitation on the public's right of access
4 to the writings of public officials and public agencies within the
5 meaning of Section 3 of Article 1 of the California Constitution.
6 Pursuant to paragraph (2) of subdivision (b) of Section 3 of Article
7 1 of the California Constitution, the Legislature makes the findings
8 set forth in this section in order to demonstrate the privacy interest
9 protected by this limitation and the need for protecting that privacy
10 interest.

11 (b) Investigations of improper governmental activities, and the
12 steps taken to correct those improper activities upon due
13 investigation, rely crucially on privacy protections for the original
14 complainant, whether or not reporting through organized
15 whistleblower programs, for the witnesses interviewed in the course
16 of the investigation, and for the persons cleared of any suspicion
17 of wrongdoing as a consequence of the investigation. Without
18 these protections, knowledgeable and conscientious persons aware
19 of improper activities will be far less likely to come forward with
20 complaints, essential witnesses will be far less likely to cooperate
21 in the investigation, and innocent public servants will be unjustly
22 injured by the disclosure of having been the subject of an
23 investigation of alleged wrongdoing. Improper governmental
24 activities will persist, unreported, uninvestigated, and uncorrected.

25 (c) In order to protect the identities and other privacy interests
26 of whistleblowers, witnesses, and innocent public servants while
27 keeping the public aware of what complaints have been received,
28 what resulting investigations have determined, which, if any,
29 persons have been found responsible for improper activities, what,
30 if any, discipline has been imposed, what, if any, steps are being
31 or have been taken to prevent recurrence of the improprieties, and
32 what complaints have been found unsubstantiated, the
33 confidentiality provisions of this bill are determined to be
34 necessary.

35 SEC. 2. Section 89574 of the Education Code is repealed.

36 ~~89574. (a) Notwithstanding Chapter 3.5 (commencing with~~
37 ~~Section 6250) of Division 7 of Title 1 of the Government Code,~~
38 ~~every investigative audit undertaken under this article shall be kept~~

1 confidential, except that the California State University may issue
2 any report of an investigation that has substantiated an allegation
3 made by the complainant, keeping confidential the identity of the
4 individual or individuals involved, or release any findings resulting
5 from an investigation conducted pursuant to Section 89045 that
6 the trustees deem necessary to serve the interests of the state.

7 ~~(b) This article shall not be construed to limit any authority~~
8 ~~conferred by law upon the Attorney General or any other~~
9 ~~department or agency of government to investigate any matter.~~

10 SEC. 3. Section 89574 is added to the Education Code, to read:

11 89574. Any investigative audit undertaken under this article
12 shall be kept confidential, except that the California State
13 University shall do the following:

14 (a) Release findings resulting from an investigative audit
15 conducted pursuant to this article that has been substantiated and
16 information regarding any action taken by the state university or
17 other agency to which the results of the investigative audit have
18 been reported. A release of findings or information shall keep
19 confidential the identity of the person providing the information
20 that initiated the investigative audit, unless the person provides
21 written permission to have his or her identity publicly disclosed,
22 and the identity of any witness interviewed in the investigation
23 who has not been publicly identified as a witness.

24 (b) Issue a report of any investigative audit that has not been
25 substantiated, keeping confidential the identity of any person
26 providing the information that initiated the investigative audit,
27 unless the person provides written permission to have his or her
28 identity publicly disclosed, any witness interviewed in the
29 investigation who has not been publicly identified as a witness,
30 and any person investigated.

31 SEC. 4. Section 8547.7 of the Government Code is amended
32 to read:

33 8547.7. (a) If, after investigating an allegation, the State
34 Auditor finds that a state agency or employee may have engaged
35 or participated in an improper governmental activity, he or she
36 shall prepare an investigative report and send a copy of that report
37 to the head of the agency involved and to the head of any other
38 agency that has direct oversight over that involved agency. The
39 investigative report may include the State Auditor's recommended
40 actions to prevent the continuation or recurrence of the activity.

1 If appropriate, the State Auditor shall report this information to
2 the Attorney General, the policy committees of the Senate and
3 Assembly having jurisdiction over the subject involved, and to
4 any other authority that the State Auditor determines appropriate.
5 Subject to the limitations of Section 8547.5, the State Auditor may
6 provide to the involved agency any evidence gathered during the
7 investigation that, in the judgment of the State Auditor, is necessary
8 to support any of the recommendations. Within 60 days of
9 receiving the State Auditor's investigative report, the involved
10 agency shall report to the State Auditor any actions that it has taken
11 or that it intends to take to implement the recommendations. The
12 agency shall file subsequent reports on a monthly basis until final
13 action has been taken.

14 (b) The State Auditor shall not have any enforcement power.
15 In any case in which the State Auditor finds that a state agency or
16 employee may have engaged in an improper governmental activity,
17 the State Auditor may provide the finding, and any evidence
18 supporting the finding, subject to the limitations of Section 8547.5,
19 to a criminal law enforcement agency, an administrative law
20 enforcement agency, or a licensing agency that has authority to
21 investigate the matter.

22 ~~(e) The State Auditor shall keep confidential every investigation,~~
23 ~~including, but not limited to, all investigative files and work~~
24 ~~product, except that the State Auditor, whenever he or she~~
25 ~~determines it necessary to serve the interests of the state, and~~
26 ~~subject to the limitations of Section 8547.5, may issue a public~~
27 ~~report of an investigation that has substantiated an improper~~
28 ~~governmental activity, keeping confidential the identity of the~~
29 ~~employee or employees involved. In addition, subject to the~~
30 ~~limitations of Section 8547.5, the State Auditor may release any~~
31 ~~findings or evidence supporting any findings resulting from an~~
32 ~~investigation conducted pursuant to this article whenever the State~~
33 ~~Auditor determines it necessary to serve the interests of the state.~~

34 (c) *Every investigation shall be kept confidential, except that*
35 *the State Auditor shall do the following:*

36 (1) *Release findings resulting from an investigation conducted*
37 *pursuant to this article that has been substantiated and information*
38 *regarding any action taken by any agency or authority to which*
39 *the results of the investigation have been reported. A release of*
40 *findings or information shall keep confidential the identity of the*

1 *person providing the information that initiated the investigation*
2 *and any witness interviewed in the investigation who has not been*
3 *publicly identified as a witness.*

4 *(2) Issue a report of any investigation that has not been*
5 *substantiated, keeping confidential the identity of any person*
6 *providing the information that initiated the investigation, any*
7 *witness interviewed in the investigation who has not been publicly*
8 *identified as a witness, and any person investigated.*

9 (d) This section does not limit any authority conferred upon the
10 Attorney General or any other department or agency of government
11 to investigate any matter.

12 SEC. 5. Section 53087.6 of the Government Code is amended
13 to read:

14 53087.6. (a) (1) A city, county, or city and county auditor or
15 controller who is elected to office may maintain a whistleblower
16 hotline to receive calls from persons who have information
17 regarding fraud, waste, or abuse by local government employees.

18 (2) A city, county, or city and county auditor or controller who
19 is appointed by, or is an employee of, a legislative body or the
20 government agency that is governed by the city, county, or city
21 and county, shall obtain approval of that legislative body or the
22 government agency, as the case may be, prior to establishing the
23 whistleblower hotline.

24 (b) The auditor or controller may refer calls received on the
25 whistleblower hotline to the appropriate government authority for
26 review and possible investigation.

27 (c) During the initial review of a call received pursuant to
28 subdivision (a), the auditor or controller, or other appropriate
29 governmental agency, shall hold in confidence information
30 disclosed through the whistleblower hotline, including the identity
31 of the caller disclosing the information and the parties identified
32 by the caller.

33 (d) A call made to the whistleblower hotline pursuant to
34 subdivision (a), or its referral to an appropriate agency under
35 subdivision (b), may not be the sole basis for a time period under
36 a statute of limitation to commence. This section does not change
37 existing law relating to statutes of limitation.

38 (e) (1) Upon receiving specific information that an employee
39 or local government has engaged in an improper government
40 activity, as defined by paragraph (2) of subdivision (f), a city or

1 county auditor or controller may conduct an investigative audit of
2 the matter. The identity of the person providing the information
3 that initiated the investigative audit shall not be disclosed without
4 the written permission of that person, unless the disclosure is to a
5 law enforcement agency that is conducting a criminal investigation.
6 If the specific information is in regard to improper government
7 activity that occurred under the jurisdiction of another city, county,
8 or city and county, the information shall be forwarded to the
9 appropriate auditor or controller for that city, county, or city and
10 county.

11 ~~(2) Any investigative audit conducted pursuant to this~~
12 ~~subdivision shall be kept confidential, except to issue any report~~
13 ~~of an investigation that has been substantiated, or to release any~~
14 ~~findings resulting from a completed investigation that are deemed~~
15 ~~necessary to serve the interests of the public. In any event, the~~
16 ~~identity of the individual or individuals reporting the improper~~
17 ~~government activity, and the subject employee or employees shall~~
18 ~~be kept confidential.~~

19 *(2) Any investigative audit conducted pursuant to this*
20 *subdivision shall be kept confidential, except the authority*
21 *conducting the investigative audit shall do the following:*

22 *(A) Release findings resulting from an investigative audit*
23 *conducted pursuant to this subdivision that has been substantiated*
24 *and information regarding any action taken by any other agency*
25 *to which the results of the audit have been reported. A release of*
26 *findings or information shall keep confidential the identity of the*
27 *person providing the information that initiated the investigative*
28 *audit, unless the person provides written permission to have his*
29 *or her identity publicly disclosed, and the identity of any witness*
30 *interviewed in the investigation who has not been publicly*
31 *identified as a witness.*

32 *(B) Issue a report of any investigative audit that has not been*
33 *substantiated, keeping confidential the identity of any person*
34 *providing the information that initiated the investigative audit,*
35 *unless the person provides written permission to have his or her*
36 *identity publicly disclosed, any witness interviewed in the*
37 *investigation who has not been publicly identified as a witness,*
38 *and any person investigated.*

39 (3) Notwithstanding paragraph (2), the auditor or controller may
40 provide a copy of a substantiated audit report that includes the

1 identities of the subject employee or employees and other pertinent
2 information concerning the investigation to the appropriate
3 appointing authority for disciplinary purposes. The substantiated
4 audit report, any subsequent investigatory materials or information,
5 and the disposition of any resulting disciplinary proceedings are
6 subject to the confidentiality provisions of applicable local, state,
7 and federal statutes, rules, and regulations.

8 (f) (1) For purposes of this section, “employee” means any
9 individual employed by any county, city, or city and county,
10 including any charter city or county, and any school district,
11 community college district, municipal or public corporation, or
12 political subdivision that falls under the auditor’s or controller’s
13 jurisdiction.

14 (2) For purposes of this section, “fraud, waste, or abuse” means
15 any activity by a local agency or employee that is undertaken in
16 the performance of the employee’s official duties, including
17 activities deemed to be outside the scope of his or her employment,
18 that is in violation of any local, state, or federal law or regulation
19 relating to corruption, malfeasance, bribery, theft of government
20 property, fraudulent claims, fraud, coercion, conversion, malicious
21 prosecution, misuse of government property, or willful omission
22 to perform duty, is economically wasteful, or involves gross
23 misconduct.